

REMARKS

Initially, Applicants would like to thank Examiner Yu for the courteous and helpful telephonic Interview conducted March 22, 2010, during which the subject matter set forth below was discussed.

Claim 1 has been amended by incorporating subject matter from claim 19 into it, thereby requiring the composition to be stable without stabilizing effective amounts of surfactant present.

Accordingly, claim 19 has been canceled.

Claims 1, 6, 8-18 and 20-24 are currently pending, although claims 21-24 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of the withdrawn claims as appropriate, particularly claims 21-23 which ultimately depend from claim 1. (See, MPEP 821.04).

The Office Action rejected claims 1, 6, 8-18 and 20 under 35 U.S.C. § 103 as obvious over WO 02/03952 (“Robinson”) in view of U.S. patent application publication no. 20010002257/French patent application no. 2,771,632 (“Stoltz”), and claims 1, 6 and 8-20 under 35 U.S.C. § 103 as obvious over EP 1,055,406/U.S. patent 6,465,402 (“Lorant”) in view of U.S. patent 6,346,255 (“Fontinos”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The claims as amended are directed to a specific type of composition (oil-in-water emulsion) having (1) at least 1% of a specific elastomeric compound; (2) capryloylglycine and/or undecylenoylglycine; and (3) a hydrophilic polymer, wherein the composition is stable as a result of the glycine derivative which is present in an amount sufficient to effect such stabilization. No stabilizing effective amount of surfactant is present in the invention compositions, meaning that irritation resulting from the presence of surfactant is not

associated with the invention compositions. The applied art neither teaches nor suggests such specific, stabilized emulsions.

As noted in the Background section of the present application, oil-in-water emulsions containing at least 1% elastomeric organopolysiloxane and hydrophilic polymer(s) tend toward destabilization. (See, page 5 of the present application). Applicants have discovered that adding capryloylglycine and/or undecylenoylglycine to oil-in-water emulsions containing at least 1% of a specific type of elastomeric organopolysiloxane and hydrophilic polymer(s) improves stability of the emulsions even in the absence of stabilizing effective amounts of surfactant. For example, examples 3-6 of the present application, demonstrate that emulsions containing the claimed glycine derivatives are stable without surfactant, whereas emulsions lacking the required glycine derivatives are not. Similarly, the Rule 132 declarations submitted July 24, 2007, and November 1, 2006, demonstrate that emulsions containing the claimed glycine derivatives are stable without surfactant, whereas emulsions containing different amino acid compounds (including glycine itself) are not.

The data in both the examples of the present application and the Rule 132 declarations submitted in this case demonstrate that the claimed glycine derivatives can stabilize oil-in-water emulsions containing at least 1% elastomeric organopolysiloxane and hydrophilic polymer(s) without surfactant, and that such stabilization was surprising and unexpected given the instability of and presence of large oily globules in extremely similar compositions. (See, Rule 132 declaration submitted November 1, 2006, at par. 9, and Rule 132 declaration submitted July 24, 2007, at par. 7). Based on this information alone, Applicants respectfully submit that the pending rejections are improper and should be withdrawn.

That is, even assuming that a *prima facie* case of obviousness has been set forth (which, as explained below, is not the case), Applicants have rebutted such a hypothetical

case of obviousness with their showing of unexpected and surprising stability of the claimed oil-in-water emulsions, and by their narrowing the claims to be commensurate in scope with their showing of unexpected and surprising results.

This is particularly true for claims 12-14 which are directed to specific hydrophilic polymers.

For at least this reason Applicants respectfully submit that the pending rejections under 35 U.S.C. § 103 should be reconsidered and withdrawn.

Furthermore, no *prima facie* case of obviousness exists. Of particular note in this regard is the fact that none of the applied art teaches, suggests or recognizes that the required glycine derivatives can be added in an amount sufficient to stabilize an emulsion with the presence of stabilizing effective amounts of surfactant. Rather, the applied art generally suggests that such glycine derivatives could optionally be added to compositions for some other purpose, if desired, and that surfactants must be added in stabilizing effective amounts. Nowhere is there even a scintilla of a suggestion that the required glycine derivatives could be added to an emulsion containing a significant amount of elastomer, and that the result would be a stable composition without surfactant.

Stated another way, the applied art neither teaches, suggests, nor recognizes that adding the required glycine derivatives is a result effective variable with respect to stabilizing emulsions, particularly emulsions without surfactant. Because of this, no motivation would have existed to add the required glycine derivatives to the claimed compositions, let alone to add the required glycine derivatives to the claimed compositions and then to optimize their concentration to effect composition stabilization without stabilizing effective amounts of surfactant also being present. Nothing in the applied art would lead one skilled in the art to this invention.

Robinson neither teaches nor suggests the presence of the required glycines. The Office has previously recognized this deficiency.

The Office Action recognized that Lorant, like Robinson, neither teaches nor suggests the claimed glycines (See, Office Action at page 7), meaning that Lorant cannot teach or suggest the claimed invention.

Thus, by themselves, neither of the primary references teaches or suggests the claimed invention.

The secondary references, Stoltz and Fontinos, do not compensate for Robinson's and Lorant's deficiencies. No motivation would have existed to combine these references with the primary references with the expectation that a stable, acceptable emulsion without surfactant would result.

For example, the fact that Robinson states over the course of 20 pages (pages 41-60) that additional active agents can be added to his compositions does not teach or suggest the claimed invention either --- Robinson's disclosure is so broad and general that one skilled in the art would not have been motivated to add the required lipophilic glycine compounds to Robinson's compositions with a reasonable expectation that an acceptable composition would result (particularly given solubility issues), let alone to add the required glycine compounds in an amount sufficient to stabilize an emulsion without surfactant. Indeed, examples 9 and 10 which were discussed during the Interview contain significant, stabilizing effective amounts of surfactant (polysorbate 40, glyceryl monostearate). For at least this reason, no motivation would have existed to combine Robinson and Stoltz to yield the claimed invention.

Similarly, the combination of Lorant and Fontinos does not yield the claimed invention. Lorant is silent concerning the claimed glycine compounds. Fontinos relates to a

patch or pad. Nothing in either of these references would lead one skilled in the art to add an emulsion stabilizing effective amount of the required glycine compound to Lorant's compositions, particularly compositions without stabilizing effective amounts of surfactant. That is, given that Fontinos' patches or pads are so structurally different from Lorant's compositions, no teaching, suggestion or motivation would have existed to add an emulsion stabilizing effective amount of the claimed glycine compounds to Lorant's compositions with the expectation that a stable emulsion would result without.

In short, the applied art would not have led one of ordinary skill in the art to optimize the required glycine derivative ingredients in such a way as to produce stable emulsions which contain a significant amount of elastomer and a hydrophilic polymer.

Accordingly, and for at least the above reasons, no *prima facie* case of obviousness exists in the present case.

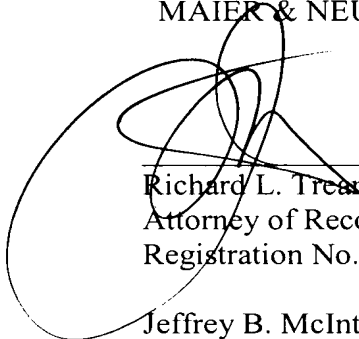
For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of all pending rejections under 35 U.S.C. § 103.

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Response to Office Action dated November 30, 2009

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard L. Treanor
Attorney of Record
Registration No. 36,379

Jeffrey B. McIntyre
Registration No. 36,867

Customer Number

22850

Tel #: (703) 413-3000
Fax #: (703) 413-2220